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ABSTRACT

This manual is designed to help Pennsylvania parents of children with disabilities learn how the special education system works in Pennsylvania and how they can make it work for their child. This revision of the manual incorporates changes made to the Individuals with Disabilities Education Act (IDEA) in 1997 and the regulations issued in 1999 to implement the Act. Chapters address: (1) the right to a free, appropriate public education; (2) the right to evaluations and re-evaluations; (3) the right to an Individualized Education Program; (4) the right to transportation and other related services; (5) the right to transition planning; (6) the right to positive behavior programs; (7) the right to extended school year programs; (8) the right to an appropriate school placement; (9) the notice of recommended assignment; (10) the right to disagree with school officials; (11) the right to special protections in school discipline; (12) the right to a high school diploma; (13) the right to pre-school and early intervention services; and (14) other important special education rights. Appendices include sample letters requesting evaluations, pre-hearing conferences, and due process hearings, a list of parent advocacy and support groups, and a list of Web sites of interest. (CR)

ED 438 656

**THE RIGHT TO SPECIAL EDUCATION
IN PENNSYLVANIA**

A GUIDE FOR PARENTS

YEAR 2000 EDITION

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SPECIAL EDUCATION TIMELINES IN PA

There are several steps to the PENNSYLVANIA SPECIAL EDUCATION SYSTEM. Timelines are included in state law to insure that school districts complete each step promptly. Please note that some timelines are in calendar days, while others are in school days; that is, days in which the schools are open.

If you find that your district does not follow a timeline, contact the special education director and discuss the problem. If you cannot get your school district to comply, you can file a complaint with the Bureau of Special Education, 333 Market Street, Harrisburg, PA 17126-0333. In some cases, you may have the right to receive compensatory services for your child if the violation is serious.

THE PRE-SCHOOL SYSTEM.

For children ages 3 to 5:

All evaluations must be completed within **45 calendar days** of the parents' consent, and a copy of the evaluation must be given to the parents within **15 calendar days** thereafter. The child's program must be developed within **30 calendar days** after the evaluation report is issued, and must begin within **2 weeks** of the parents' approval of the program.

Children in the pre-school system must be re-evaluated **every year**, and their program must be reviewed, and, if necessary, revised, **every six months**.

SPECIAL EDUCATION FOR SCHOOL AGE CHILDREN.

A student must be fully evaluated within **45 school days** after the parents' written consent for an evaluation is received.

At the end of the evaluation, a draft report must be given to the parents, who then have **5 school days** to submit any comments. The final evaluation report must be issued within **10 school days** after the evaluation is completed, and a copy of the report must be given to the parents not more than **5 school days** after that.

The student's program plan (called an IEP) must be developed with the parents within **30 calendar days** after the evaluation report is issued.

Parents have **10 calendar days** to approve or disapprove the proposed program and placement if the Notice of Recommended Assignment (NORA) is mailed to them, and **5 calendar days** to respond if the NORA is handed to them.

The child must be placed in the program within **10 school days** after the parents have approved the IEP and NORA.

Youngsters in special education must be re-evaluated **every 2 years**, and their program must be reviewed, and if necessary revised, **every year**.

COMPLAINT PROCEDURES.

Parents have the right to request, in writing, a pre-hearing conference (PHC) at any time they are unhappy with the child's evaluation, program or progress. The PHC must be held within **10 calendar days** of the school's receipt of the request.

Parents who cannot resolve their dispute with their school district at a PHC can request, in writing, an administrative due process hearing. The hearing must be held within **30 calendar days** of the parents' request, unless the hearing officer extends the time.

The decision of the hearing officer must be issued within **15 calendar days** after the hearing is completed.

The State Department of Education, Division of Compliance, has **60 calendar days** to investigate and resolve a written complaint from parents who believe their or their child's rights under the special education laws have been violated.

**THE RIGHT TO SPECIAL EDUCATION
IN PENNSYLVANIA**

A GUIDE FOR PARENTS

YEAR 2000 EDITION

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The Education Law Center – PA is a non-profit public interest law firm. ELC staff provide free legal assistance to parents, students, and parent organizations on public education issues in Pennsylvania. ELC also operates the Pennsylvania School Reform Network (PSRN), which seeks to promote promising educational reforms that improve the quality of education for all children.

Pennsylvania Protection & Advocacy, Inc. is an independent, non-profit agency designated by the Governor to protect and advocate for children and adults with disabilities. PP&A's Children's Project provides technical assistance to parent advocates and works on public policy issues affecting children and young adults with disabilities in the education, mental health, health care and juvenile justice systems.

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Single copies are available to parents and their advocates without cost. Other individuals may obtain copies at a cost of \$7.50 per copy, plus tax and postage. Discounts are available for bulk orders. Parent organizations that wish to place bulk orders should contact ELC-PA for special arrangements.

This manual is also available in alternate formats. If you are interested in obtaining a copy, contact ELC-PA.

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INTRODUCTION

This Manual is designed to help you - the parent - learn how the special education system works in Pennsylvania and how you can make it work for your child. Keep in mind that no one knows your child as well as you do. The law makes clear that your knowledge of your child and your opinions on the types of education services needed are important and must be considered by school officials.

This edition of *The Right to Special Education in Pennsylvania*, incorporates changes made to the Individuals with Disabilities Education Act (IDEA) in 1997, and the regulations issued in 1999 to implement the Act. At the time of this writing, the Pennsylvania State Board of Education was considering changes to state special education regulations and standards. However, virtually all of the rights discussed in this Manual are based on federal law, and will remain the same even if some changes are made in state regulations. Feel free to contact ELC-PA for an update.

REMEMBER:

- ◆ Always keep copies of any letters, reports or other material you give to school officials.
- ◆ Make notes of any conversations you have with school officials, including the date the conversation took place and the person's name and position.
- ◆ If a school official promises to do something for you or your child, make a note of the person's name, the date, what is to be done, and the date by which it's supposed to be done.
- ◆ Consider taking a friend, neighbor or advocate with you to meetings at your child's school.
- ◆ When you attend school meetings, ask each person at the meeting to tell you their name and position - and keep a record of the information.
- ◆ If you ask for something and are told "we don't do that" or "we can't do that," ask the school officials for a copy of the written policy, law or regulation on which they're relying.

CHAPTER ONE

THE RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION

CHILDREN COVERED BY THE LAW

Federal and state law guarantee every eligible child with a disability a "free appropriate public education." To be eligible, a child must have a physical, emotional or mental disability and because of the disability, must need special education. Recognized disabilities include, for example, mental retardation, sensory and orthopedic impairments, autism, learning disabilities and severe emotional disturbances. Children who have chronic health problems, Tourette Syndrome or attention deficit disorders (ADD or ADHD) can also be eligible under the category of "Other Health Impaired." A listing of the recognized disabilities and their definitions is included as Appendix A.

Eligible children are entitled to receive a free appropriate education at the age they begin attending public school. They can continue to receive their special education program and services through the school year in which they turn 21, or until graduation from high school, whichever comes first. Youngsters who turn 21 in July or August are entitled to return to school in September and finish out the school year.

Eligible children who attend publicly funded "Charter Schools" are still entitled to receive the special education and related services they need. Children placed in private or parochial schools by their parents, however, have no individual right under federal law to receive all of the special services that they would receive if enrolled in public school.

Young children ages 3-5 who have disabilities or developmental delays may be entitled to Pre-School services. Children with disabilities from birth to age 3 may be eligible for Early Intervention services. The rights to Pre-School and Early Intervention services are discussed in Chapter Thirteen.

Some children may have a health problem, such as diabetes, or another disability, but may not require special education services. These children are still entitled to the services, accommodations and modifications they need to participate fully in their regular education programs and non-academic and extra-curricular activities. For more information concerning the rights of these youngsters, contact ELC offices.

SPECIAL RIGHTS THE LAW PROVIDES

The law gives each eligible child the right to a free education designed to meet the child's unique learning needs. This includes "specially designed" classroom instruction and the "related services" needed by the youngster to benefit from the classroom program. "Supplemental aids and services" must also be provided to help the student succeed in regular education activities. Eligible children and their parents are also entitled to certain special protections - often called "due process procedures" - to assure that their opinions are considered by school officials.

The term "specially designed instruction" means that teachers must modify the content, methodology or delivery of the curriculum to take account of your child's learning style.

"Related Services" are services needed to help the student benefit from the education program. These can include transportation to and from school, or around the school building; physical, occupational and speech therapy; counseling or psychological therapy; school health services; and other services the child may need to benefit from or have access to the school program. The services of a medical doctor are usually not included, except where necessary to determine the child's disability or the type of program or services the child needs; however, school health services are available.

"Supplemental Aids and Services" are aids, services and supports that are provided to help enable children with disabilities to be educated with their typical peers. The help of a special teacher, an instructional aide or modifications to the regular curriculum are examples. The support the student - and the student's teacher - need for the youngster to succeed in regular classes must be provided.

"Due Process Procedures" include your right to advance notice of school proposals for the education of your child. An informal conference and formal impartial hearing are available to challenge proposals with which you disagree. Mediation is also available to help parents and school officials resolve disputes. Parents may file an administrative complaint with the state when a youngster's rights are violated.

The law also requires that students with disabilities be provided any assistive technology services they need for their education. This includes evaluating a child's need for an assistive device; providing a device; and training the student, teachers and family to use the device. An assistive technology device can be any item or piece of equipment - whether "off-the-shelf" or customized - that increases or maintains the child's functional abilities; for example, an electronic communication device, a specially designed

desk or a tape recorder. AT devices may be provided for home use when necessary.

To the extent appropriate, special education students should be taught using the general education curriculum. Special education should help prepare students for the long-range goals of employment and independent living. For some students, the curriculum must also include learning life skills such as dressing skills, or social skills needed to relate appropriately to peers and adults. Other students may require extra time focused on learning basic academic skills such as reading and arithmetic.

Several times each year, parents must be informed of their child's progress toward program goals and whether the progress is sufficient to enable the child to achieve the goals by the end of the year. Most children with disabilities must be included in district and state-wide assessments, with accommodations, if necessary, so that parents can tell how their child is doing relative to state and local standards. If your child cannot participate in standard assessments, alternative assessments must be used. High expectations must be set for all children, including children with disabilities.

Special education is a program, not a placement. Special education programs and services can be provided in a regular classroom, a special classroom or in a special school, depending on the needs of the child. The law favors placement in the school the child would attend if he or she did not have a disability. Children should be placed in separate classes or schools only if their needs cannot be met in a regular education environment, even with supports. Students who require placement in a special class or school must still be given opportunities to be included in school programs and activities with their non-disabled peers.

PROGRAM RESPONSIBILITY

The School District where the parents live is responsible for making sure that each eligible student is located, identified and provided a free appropriate public education. However, children who live in foster care, group homes, residential treatment or other child care facilities are entitled to receive their education from the school district in which they live.

ALL PROGRAMS AND SERVICES MUST BE FREE

All special education programs and related and supportive services needed by the child to receive an appropriate program must be provided without cost or financial liability to the family. School officials may not ask a family to use their private insurance to pay for an evaluation or service if there is a cost involved, an annual or lifetime limit to benefits under the policy, or if using the policy could result in a rate increase.

School officials may use a child's Medicaid card to pay for services that also qualify under the Medical Assistance program. These could include, for example, speech or physical therapy. Medical Assistance may also pay for certain other medically necessary services or equipment to children in school, such as the assistance of a registered nurse for a medically involved child, or the help of 1-to-1 support staff for a youngster who has severe behavior problems. Regardless of what agency ultimately pays for the service, the school district must list the service on the IEP and must make sure the service is provided without cost if needed by the student for an appropriate program.

WHAT MAKES A PROGRAM "APPROPRIATE"?

Under the law, the special education services provided to each eligible student must be "appropriate" for that child. To be appropriate, the services must be developed according to the procedures discussed in this Manual. In addition, to be appropriate, the special education program and services must give the student an opportunity to make meaningful progress. How much progress is "meaningful" for each child depends on the individual child's potential. Merely passing from grade to grade does not guarantee that the program is appropriate. ***If your child is not making meaningful progress in his or her special education program, the program is probably not appropriate.***

A FREE APPROPRIATE PUBLIC EDUCATION

A free appropriate public education is a planned program of education and special services that takes account of the child's individual needs. An appropriate program allows the student to make meaningful progress and to prepare for employment and independent living. Each youngster's program must be provided without cost to the family and must be designed to help the student learn to participate fully in the community.

CHAPTER TWO

THE RIGHT TO EVALUATIONS AND RE-EVALUATIONS

In order to find out what type of special help a youngster needs, it is important to understand the child's learning strengths and differences. Therefore, an in-depth evaluation must be done before a child can be recommended for special education. Re-evaluations must be done on a regular basis, and whenever needed to help improve the child's program. The evaluation should determine whether the child has a disability and is eligible for special education. An evaluation or re-evaluation should also determine the type of specialized instruction that the student needs in order to learn. ***All evaluations and re-evaluations needed to determine whether the child is eligible and the type of special program and related services the child needs must be provided free of charge.***

STARTING THE PROCESS - THE INITIAL EVALUATION

If school officials want to evaluate your child for the first time, they must send you a written notice telling you the types of evaluations that are being recommended; the dates of the evaluations; your right to meet with an evaluator before testing is done; your right to review your child's school records; and your right to give or refuse consent to the proposed evaluation. If you refuse to consent in writing to your child's first evaluation, the evaluation cannot be done unless school officials request a hearing and obtain an order from a special education hearing officer.

You may also begin the process yourself, if you believe your child needs special education services. To do so, you must make a written request for an evaluation. If you make an oral request, the law requires that school officials tell you that the request must be in writing and give you a form to use.

**HOW TO REQUEST
A SPECIAL EDUCATION EVALUATION:**

If you want your child evaluated for special education, send a written request to the principal of the child's school. You can use the sample letter found at Appendix B of this Manual or you can write your own letter. Include your child's name; date of birth; why you think an evaluation is needed; and that you give consent for the evaluation to take place. Be sure to keep a copy of the letter for your records! The evaluation must be completed within 45 school days from the date of your consent.

If you do not hear from school officials within a few weeks, call the school principal and ask when the evaluation will take place. If you do not get a satisfactory answer - or if you get no answer at all - you may file a complaint with the State or ask for a special education hearing. (See Chapter Ten)

Usually, the student must be evaluated by a certified school psychologist as part of the first evaluation. Educational assessments will also be needed. Your child's present skill levels must be determined, and his or her learning needs identified. The evaluation process may also include an evaluation by a physician or therapist if certain related services - such as physical or occupational therapy - may be needed by the child.

RE-EVALUATIONS

If your youngster has been receiving special education services, but you don't believe the program has been working, it is sometimes useful to obtain a re-evaluation to help find out what program changes should be made. You can request a specific type of evaluation if your child is having problems in a particular area. For example, if your child has not been making progress in learning to read, it may be useful to get a reading evaluation to find out how to deal with the problem.

**HOW TO REQUEST
A SPECIAL EDUCATION RE-EVALUATION:**

If you want a re-evaluation of your child, you should write to your child's principal. You can use the sample letter found at Appendix C of this Manual or you can write your own letter. Include your child's name; date of birth; why you believe a re-evaluation is necessary; and that you give your consent for the re-evaluation to take place. Be sure to keep a copy of the letter for your records!

If you request a re-evaluation of your child and the school district refuses to do one in a reasonable time, you have the right to begin the due process procedures by requesting a pre-hearing conference or a special education hearing. (See Chapter Ten)

In addition, every student receiving special education services must be re-evaluated at least once every two years and before any significant change is made in a student's program or placement. Pre-Schoolers must be re-evaluated once each year. The school district must give you written notice before re-evaluating your child and must ask for your consent to conduct the re-evaluation. If you do not respond to the request for consent, school officials can assume you approve and can proceed with the re-evaluation.

The re-evaluation should determine if your child is making meaningful progress in skill and behavior levels; if not, why not and what changes are needed. A re-evaluation must also identify any additions or modifications to the special education and related services that are needed to help the child participate in the general curriculum. Assessments designed to determine if the student remains eligible for special education do not have to be done, but school officials must tell you if they will not be testing for eligibility. If you disagree with their decision, you have the right to ask that eligibility testing be done.

RULES FOR EVALUATIONS AND RE-EVALUATIONS

An evaluation or re-evaluation must look at more than just the student's academic levels. A variety of assessment tools and strategies must be used to gather relevant functional and developmental information about your child. Children must be assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communication

needs, and motor abilities. Evaluations and re-evaluations must be comprehensive enough to identify all of the child's special education and related service needs, even if they are not typical of the child's disability. Evaluations and re-evaluations must also determine the types of special help your child needs in order to progress in the general education curriculum.

Your child's school records must be reviewed and considered, and school staff in addition to the teacher must observe your child in the classroom. Since your own knowledge of your child's strengths and learning difficulties is extremely important, your input must be requested and considered by school officials.

Evaluations and re-evaluations must take account of the child's English language skills and ethnic background, so that the testing and evaluation will not be racially or culturally biased. For example, a child who does not speak English should be evaluated by someone who speaks the child's language. Testing must also take account of a child's disability to assure that the test is fair. For example, a child who has a severe visual problem should not be given a written intelligence test.

GETTING INDEPENDENT EVALUATIONS

You have the right to get evaluation reports from professionals outside the school system and submit them to school officials. These reports are often called "independent" evaluations. School officials must consider the results of any independent evaluations you submit.

You also have the right to request that the school system pay for an independent evaluation of your child if you believe the school's evaluation was not appropriate. However, school officials may deny your request. If they do, a special education hearing must be set up by the school district so that an impartial hearing officer can decide whether the district should pay for the independent evaluation.

Of course, you are free to obtain an independent evaluation of your child at your own expense without asking the school district. If you are thinking of requesting a hearing because you are not satisfied with your child's program and haven't been able to resolve your concerns with school officials, an independent evaluation is usually needed to help prove your case. If you go to a hearing, you can ask the hearing officer to order the school district to reimburse you for the cost of the independent evaluation. Reimbursement may be given if the hearing officer decides that the district's evaluations of your child were inadequate.

**HOW TO REQUEST
AN INDEPENDENT EVALUATION OF YOUR CHILD:**

If you want to ask the school district to pay for an independent evaluation of your child, you should make a request in writing to the principal of your child's school. You can use the sample letter found at Appendix D of this manual or you can write your own letter. Include your child's name, date of birth and current program. Explain why you believe the school district evaluation is not appropriate. Be sure to keep a copy of the letter for your records!

If you do not hear from school officials within 2 or 3 weeks, call the principal and ask for a response to your request. If you cannot get an answer, you can file a complaint with the State Department of Education or you can request a special education hearing. (See Chapter Ten)

If you use an independent evaluator, be sure that the specialist has the right qualifications. For example, an independent psychological evaluation should be done by a "certified school psychologist," which is the type of psychologist school officials must also use. Make sure you give the independent evaluator copies of your child's current IEP, the one being proposed by school officials and other school records on your child. You should also ask the independent evaluator if he or she will testify for your child at a hearing.

It is important that independent evaluators understand the eligibility rules for special education and related services, and that their reports discuss why the child is eligible for special services and the types of services needed. If at all possible, the independent evaluator should visit your child's present classroom and also observe any program that is being recommended by the school district.

REVIEWING THE RESULTS

The law requires that the results of all evaluations, including any independent evaluations, observations by teachers and other personnel, information you provide and other data on the child be reviewed by a team of specialists, called a Multi-Disciplinary Team (MDT). Parents must be included on the team. The MDT must also include at least the school psychologist and the child's teacher. Others who know the child, the testing procedures, or the student's current program can also be included. If you or the school district think that the youngster's cultural background may affect the evalua-

tion process, a person familiar with the child's culture should also be on the team, if possible. The school principal or a representative of the principal heads the MDT.

The purpose of this "team" approach is to make sure that the student is given a full and complete evaluation, and that decisions are not made on the basis of any one test, such as an IQ test. ***The law mandates that no one test or type of test can be used as the basis for determining whether a child needs special education or the type of services needed.***

THE EVALUATION REPORT

After its review of all material, the MDT must issue a written Report. The Report is sometimes called a "Comprehensive Evaluation Report" or CER. The CER brings together the information and findings from the evaluation or re-evaluation. The CER must recommend whether the child is or continues to be eligible for special education and the types of services needed. All members of the MDT - including the parents - are entitled to see a draft of the Report. If you agree with the Report, you can sign it indicating agreement. If you do not agree with it, you have 5 school days to write a "dissenting opinion" stating your reasons for not agreeing; for example, you don't believe the CER contains the information needed to design a good program for your child. Other members of the MDT also have this right. All dissenting opinions must be included as part of the final Report.

TO HELP DESIGN A GOOD PROGRAM FOR YOUR CHILD, THE REPORT SHOULD ANSWER, AT MINIMUM, THE FOLLOWING QUESTIONS:

- ☐ Does your child qualify for special education services?
- ☐ What are your child's current skill levels?
- ☐ In which skill and behavior areas does your child have problems?
- ☐ In which activities does your child succeed and what are his or her strengths?
- ☐ What is your child's learning style and what teaching strategies work best with your child? What type of specialized instruction is needed for your child to learn?

- ☐ What are your long-term goals and priorities for your child?
- ☐ What kind of help will your child need to make progress in the general curriculum?
- ☐ What kinds of extra help will your child need to participate and succeed in regular education classes?
- ☐ If your child already receives special education, has he or she made progress in skill and behavior levels since the last evaluation? If not, why not?
- ☐ If your child has behavior problems, when do those problems occur? How can problems be avoided, and what should happen when problems do occur?
- ☐ What types of related services are needed (such as transportation, speech, physical, occupational or counseling services)?

EVALUATION AND RE-EVALUATION TIMELINES

For school-age students, the evaluation or re-evaluation process must be completed within 45 school days after you consent to an initial evaluation; after notice is given to you of a re-evaluation; or after the district receives an order to conduct an evaluation or re-evaluation from a special education hearing officer or a court. A short extension of this timeline by school officials is possible only with the prior permission of the state Department of Education.

The MDT Evaluation Report must be completed and a copy given to you within 15 school days after the evaluation or re-evaluation is done.

For pre-school children, the evaluation or re-evaluation must be completed within 45 calendar days after receiving parental consent; after notice of a re-evaluation; or after an Order from a hearing officer. The written Report must be completed and given to you within 15 calendar days after the evaluation or re-evaluation is done.

CHAPTER THREE

THE RIGHT TO AN INDIVIDUALIZED EDUCATION PROGRAM

Every eligible student is entitled to an Individualized Education Program (IEP). The IEP is a written plan that tells what special education programs and services the child will receive. The IEP is written at a conference by a team that includes the child's parents. The IEP identifies the goals for the child's program, the specialized instruction that will be used to teach the child and the way the child's progress will be monitored. ***An IEP must include all the programs and services necessary to meet a child's individual needs as identified during the evaluation or re-evaluation process.***

Once the IEP is developed, school officials must make sure that the child receives all the programs and services listed in the IEP. A copy of the IEP must be available to all personnel who work with your child. Each teacher or other provider must be informed by school officials of his or her specific responsibilities for implementing the IEP and of the accommodations, modifications and supports that must be provided under the IEP. All personnel who work with the student must be appropriately and adequately prepared and trained.

When a child moves from one Pennsylvania school district to another, the IEP "moves" with the child and generally must be followed by the new school district, unless the parent and district agree to a change or a change is ordered by a hearing officer.

An IEP conference must be held each year to review, and if necessary, revise the IEP. Each goal area in the student's IEP should be reviewed to determine if progress is being made. The Team must also consider the strengths of the student, the concerns of the parents, the results of the most recent evaluation and the results of the student's performance on district and state-wide assessments. As will be discussed later in this Manual, an IEP conference must generally be held before a student's program or placement can be changed for disciplinary reasons.

The State Department of Education maintains an Instructional Support System that serves as a resource for parents and school districts in the area of program development and implementation. Instructional Support Staff are available through the Instructional Support Centers listed in Appendix E, and through each Intermediate Unit. You can contact Instructional Support Staff, one of the parent support groups listed in Appendix I, or, if you have access to the internet, one of the websites listed in Appendix J, to help find information and ideas on successful programs for children with disabilities.

THE IEP TEAM

The IEP team is responsible for reviewing the evaluation or re-evaluation Report and deciding whether a child needs special education. If the team decides that your child does need special education, it then decides the kind of program and services needed and the placement in which services will be provided. If the team decides that your child is not eligible for special education, it must give or send you a written notice of the decision that explains your right to disagree and request a special education hearing.

Each IEP team must include:

- ◆ The child's parent(s);
- ◆ At least one regular education teacher, if the child is or will be participating in regular education classes, to help determine the supports the student and teacher will need;
- ◆ At least one special education teacher of the child;
- ◆ Someone qualified to provide or supervise special education programs;
- ◆ Someone knowledgeable about the general curriculum;
- ◆ The person who made the initial referral for screening or evaluation;
- ◆ A person who knows the district's program and placement options;
- ◆ A member of the Instructional Support Team, if an IST was used;
- ◆ One or more members of the MDT which completed the most recent evaluation or re-evaluation of the student;
- ◆ Someone qualified to do an educational evaluation if the student is thought to have a learning disability;
- ◆ The student, if over 14 or if you want the student to attend;
- ◆ Any other individuals whom you or school officials want to attend the conference, including an advocate.

A single member of the IEP team may meet two or more of the above requirements; however, an IEP team must have at least two members in addition to the parent(s).

THE IEP CONFERENCE

The law requires that the IEP be developed by the team at a conference and prohibits school officials from deciding what the IEP will say before then. Parents must be invited to attend even if their child lives away from home in a residential setting. The conference must be scheduled at a time and place convenient for you and school officials.

The law requires school officials to make every effort to ensure that parents attend IEP conferences. You must be notified in writing of the purpose, time and location of the conference and of the other people who are invited to attend. You must be given the chance to participate in the meeting by phone, if you cannot be there in person. The notice must be in the language you use and must be sent to you early enough so that you have an opportunity to make arrangements to attend the conference. You may ask to change the date and time if you are unable to attend.

CONTENT OF THE IEP

The IEP of each eligible child must include the following information:

- ☐ **CURRENT EDUCATION LEVELS** - What are the student's levels in academics, social and living skills? How does the child's disability affect his or her involvement and progress in the regular education curriculum?
- ☐ **ANNUAL GOALS AND SHORT-TERM OBJECTIVES** - What do we want the student to learn this year, and what are the steps towards those goals? What is needed to help the child be involved - and progress - in regular education? Goals and objectives must be clear and measurable.
- ☐ **SPECIALIZED INSTRUCTION TO BE PROVIDED** - What special methods will be used to help your child learn and make progress? What type of help is needed for your child to participate and progress in the general education curriculum? This is one of the most important parts of the IEP, as it must tell you exactly what school personnel will do to help your child learn.

- ☐ **TYPE, AMOUNT & FREQUENCY OF RELATED SERVICES** - If your child needs a related service, such as transportation or physical, occupational or speech therapy, what type of service is needed? How often will it be provided? For how much time each session? See Chapter Four.
- ☐ **HOW TO DETERMINE IF YOUR CHILD IS MAKING PROGRESS** - How will we know if the program is working and the child making progress towards the goals? What objective methods (not simply "teacher observation") will be used and who will collect that information? How will the parents be regularly informed of the amount of progress?
- ☐ **STATE AND DISTRICT-WIDE ASSESSMENTS** - Will your child be able to participate in state and district-wide assessments? Are modifications or adjustments needed in view of your child's learning differences? If the student cannot participate in regular assessments, what alternative assessments will be used?
- ☐ **CLASSES & ACTIVITIES WITH REGULAR EDUCATION STUDENTS** - Which parts of the school day will your child be with regular education students? What supports are needed for your child to succeed? More time to take tests? A special teacher or aide to help? What supports will the regular education teacher need in the classroom? If your child will not be participating in regular education classes with supports, the IEP must explain why.
- ☐ **TYPE OF SPECIAL EDUCATION PROGRAM** - There are several types of support programs: learning, emotional, life skills, sensory, autism support, etc. The special program can be provided in any type of setting, including a regular education class.
- ☐ **AMOUNT OF SPECIAL EDUCATION** - Does your child need special education for only some of the day? Most of the day? All day?
- ☐ **TYPE OF PLACEMENT** - Is there any reason the IEP cannot be implemented in the neighborhood school? If not there, in another nearby public school? The law requires that your child receive services with children who are not disabled, unless your child's needs (not the needs of school officials) require a different setting.
- ☐ **DATE SERVICES BEGIN & END** - Will all services begin immediately? Will all continue through the school year?
- ☐ **SIGNATURES OF IEP TEAM MEMBERS** - Those who attend the IEP Team meeting sign the IEP.

IF NEEDED BY YOUR CHILD, THE IEP MUST ALSO DESCRIBE:

- ☐ **BEHAVIOR PROGRAMS** - If your child has emotional or behavior problems in school, how will they be handled? All children who have behavior issues that interfere with learning must have a behavior plan as part of their IEP. See Chapter Six for a discussion of behavior assessments and programs.
- ☐ **ASSISTIVE TECHNOLOGY DEVICES** - Does your child need special equipment or technology? Do your child, the teacher or family need training with an assistive device?
- ☐ **VOCATIONAL PROGRAM** - Would vocational training be a good idea? For what type of employment should the student be prepared?
- ☐ **INSTRUCTION IN BRAILLE** - If your child is blind or visually impaired, should instruction in Braille and the use of Braille be included in the program?
- ☐ **COMMUNICATION PROGRAMS** - Does your child need a language/communication program? If your child is deaf or hearing impaired, does the program provide opportunities for the child to be with peers and adults who use the youngster's mode of communication?
- ☐ **GRADUATION PLANNING** - If your child is within 3 years of graduation, is he or she on track to meet all graduation requirements?
- ☐ **EXTENDED SCHOOL YEAR (ESY)** - If breaks in the education program will have a negative impact on your child, a summer program may be needed. See Chapter Seven.
- ☐ **ADAPTIVE PHYSICAL EDUCATION** - Are special gym classes needed?
- ☐ **TRANSITION SERVICES** - What skills will your child need for adult living? Are the needed skills being taught? Are services from other agencies needed? Transition planning begins when the student reaches the age of 14. See Chapter Five.
- ☐ **HEALTH CONCERNS** - Does your child have any medical or health problems that need special attention?

REMEMBER, THE IEP MUST ADDRESS YOUR CHILD'S NEEDS:

Don't accept an IEP that isn't based on your child's special learning needs. For example, if your child has trouble reading, the IEP should include a reading program based on how your child learns. Sometimes, districts try to give parents an IEP that is just a form checklist, or one that includes only a "watered-down" version of regular education goals and does not focus on the student's particular learning differences.

You should insist that the IEP contain all programs and services necessary to meet your child's needs. If it doesn't, you should disapprove the IEP - in writing. You have the right to ask for mediation, for a pre-hearing conference, or for a special education hearing to try to resolve your concerns. (See Chapter Ten)

TIPS ON DEVELOPING IEPs

REVIEW THE EVALUATION REPORT and your child's records before you go to the IEP conference. The law requires that you receive a copy of the report at least 10 days before the IEP conference. Make a note of the areas in which the evaluators found that your child is having difficulty and any other problem areas you have seen in your child.

REVIEW THE CURRENT IEP if your child is already in special education, and determine whether your child has been making progress towards program goals. If not, do you know what the problem is? How has your child done on district and state-wide assessments?

THINK ABOUT WHAT YOU WANT YOUR CHILD TO LEARN. It might be helpful to try to answer such questions as:

- ◆ What subjects and skills are other students learning at your child's age and in what subjects and skills does your child need special help? Are some of these especially "high priorities" in your mind?
- ◆ What kinds of help does your child need in these areas? For example, what teaching methods work best with your child and what types have been tried and have not worked? Does your child learn best by repetition? Does your child need to see the material as well as hear it? What needs to be "special" about the way your child is taught?

- ◆ What activities especially interest or motivate your child? Are enough of these included in your child's school day? Is there a need to give your child more opportunities for success in school?
- ◆ Are there parts of the school day that your child is finding particularly frustrating? How can they be improved? Are there areas that shouldn't be included in your child's program at all?
- ◆ Should your child be spending more (or less) of the day in regular education classes? Which ones? Should your child be spending more time with peers who do not have disabilities in activities such as gym, music, art and lunch?

CONTACT a parent support group or the Instructional Support System listed in the Appendix to get ideas and examples of appropriate goals and specialized instruction for your child.

MAKE A LIST of some specific ideas of what you'd like to see included in the IEP and of any questions you have. Take the list with you to the IEP conference. Remember, you are free to bring up for discussion anything you think is needed as part of your child's school program. School officials may or may not agree with you (see box below), but they have to discuss your ideas with you.

QUESTION the school staff concerning what teaching methods work best with your child. If your child already has an IEP, has he or she made progress in the current program? Have goals been reached? If not, what changes are needed? If you don't know why your child is not doing well in school or what goals would be appropriate for your child, ask the teacher and evaluator for their opinions. If no one seems to have the answers, you may also want to request some additional evaluations of your child.

SPEAK YOUR MIND! Make sure that the completed IEP contains as much of your input as possible and includes all of the information listed under "THE CONTENTS OF AN IEP," above.

**HOW TO HANDLE
DISAGREEMENTS AT THE IEP CONFERENCE:**

You may disagree with the programs and services that school officials propose for your child - or you may want the IEP to contain programs or services that school officials will not agree to give your child. While at the conference, you should explain what you want or what you don't want to appear on the IEP and the reasons why. Take each issue one at a time. If you can't get school officials to agree with you, move on to the next issue. You should try to get the IEP as close as possible to what you want during the IEP conference.

If you think the IEP worked out at that time does not meet your child's needs, you have the right to disapprove the IEP and use the mediation or hearing process to resolve your concerns.

Once the student's IEP is developed, the IEP team must then decide on the appropriate school placement (see Chapter Eight).

IEP TIMELINES

For school-age students, the IEP must be completed within 30 calendar days after the MDT Report is issued. If you approve the initial IEP in writing, or approve or do nothing concerning a later IEP, the IEP must be implemented as soon as possible, but no later than 10 school days after it is completed.

IEP Conferences must be held for each eligible child at least once per year. Parents - or any other IEP Team member - can request an additional IEP conference at any time they believe their child is not making progress in the program.

The same timelines apply to pre-school youngsters, except that the IEP must be reviewed every six months and implemented within 14 calendar days.

CHAPTER FOUR

THE RIGHT TO TRANSPORTATION AND OTHER RELATED SERVICES

The IEP must contain the "related services" needed to help your child benefit from or gain access to the education program. Related Services include transportation and support services such as physical, occupational or speech therapy. ***It is important that the IEP state the type, amount and frequency of the related services to be provided.*** For example, instead of just stating "speech therapy," an IEP should state "individual speech therapy, 30-minute periods, 3 times per week." In this way, you will know exactly what your child should receive. If the service is not provided as stated, you can file a complaint with the State to enforce the IEP (see p. 38).

It is important to remember that a student is entitled only to the type, frequency, and amount of related services needed to assist the youngster to benefit from or gain access to the education program. Be sure any independent evaluator you use answers the following questions in his or her evaluation report:

- ◆ What type(s) of related service(s) does the student need?
- ◆ What should be the goals of these services, and what methods should be used?
- ◆ How often should the child receive the service(s)?
- ◆ For how long should the child receive the service each time it's provided?
- ◆ Why is this service necessary in order to help the child benefit from the program as set out in the IEP?

Transportation to and from school is a frequently needed related service. Transportation must be appropriate for your child. For example, if your youngster uses a wheelchair, transportation should be provided with a lift bus or other vehicle able to handle the wheelchair in a safe manner. Like all other related services, transportation must be provided for your child without cost to you.

The length of the transportation provided must also be appropriate in view of your child's age and special needs. While there is no absolute rule on the length of the transportation ride, a general guideline is that a child should not spend more than one hour getting to or from school. However, for young children or children with severe disabilities, one hour - or even one-half hour - may be too long a ride and therefore not appropriate. The IEP should state the type of transportation needed, and whether your child will be picked up at the door, at a bus stop or will be provided tokens for use on public transportation.

CHAPTER FIVE

THE RIGHT TO TRANSITION PLANNING

TRANSITION FROM PRE-SCHOOL TO SCHOOL-AGE PROGRAMS

The law requires that the IEP of a young child who is in a pre-school program and is within one year of moving on to a program for school-age students contain goals and objectives which address the transition process. This could include, for example, activities to prepare the child for the move, such as planned visits to the new class, students or teacher. Parents must also be involved in the transition process, and may also have an opportunity to visit the new classroom in advance of the child's move. On-going communication and cooperation between the receiving and sending staffs is also required. Every effort should be made to foster program continuity so that the transition is a smooth one for the youngster.

Parents may choose to keep their kindergarten age child in a pre-school program until the age for first graders. For children moving on to school-age programs, a transition meeting must be held by the end of February. A representative from your local school district must attend the meeting. Parents will be asked to sign an Intent to Register form so that the district can begin to prepare for the child. Parents and school officials can agree to continue the child's IEP as is. If they do not agree, the district must do a new multi-disciplinary evaluation of the child, and thereafter, convene a new IEP team meeting. If parents and school officials cannot agree on a program for the child at that time, the child must continue to receive the services described in the preschool IEP until the hearing process is complete.

TRANSITION TO ADULT LIFE

Children with disabilities, like all children, need to learn certain skills in school in order to prepare for adult life. The skills that are needed will depend, in part, on what the student will be doing after high school. Will the student attend further education in college or vocational school? Will the student be going to work? Where will the student live: at home? in the community? independently?

For example, if a student with a disability will be living in a group home and participating in supportive employment, is the youngster being taught relevant skills such as activities of daily living, job readiness, use of public transportation, the ability to handle money and go to the store? If the student will be attending post-secondary school, are the appropriate preparatory

courses included in the child's program? Will the student need to learn study skills or organizational skills to succeed in higher education?

The law requires that we begin to consider these questions once the student becomes a teenager, and begin to identify what skills the student will need to be taught to make a successful transition to adult life. The IEP of each student with a disability beginning at age 14 must identify the goals and objectives of the child's special education program that relate to transition needs. Once the student reaches the age of 16, the IEP must also contain a statement of the needed transition services for the student, including services needed from outside agencies, such as the Office of Vocational Rehabilitation.

Transition services must be based on the individual student's needs, preferences and interests. Transition services can include:

- ◆ Specialized instruction
- ◆ Related services
- ◆ Community experiences; and
- ◆ Development of employment skills or other post school objectives.

Transition planning is part of the yearly IEP process, and the transition plan must be updated each year. In addition to the regular members of the IEP Team (including, of course, the parents), the student should also be present at the IEP Conference when transition is discussed, to make sure the student's interests are considered. If the student doesn't attend, the school district must still identify the student's preferences. Representatives from outside agencies, such as OVR or the Bureaus of Mental Health and Mental Retardation, or other community service providers can also be invited to the IEP meeting with your permission to help identify and plan needed transition activities. If an outside agency does not provide the transition services called for in the IEP, the school district must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student.

The State Department of Education has developed Guidelines for Transition Programs. You can get a copy of the Guidelines by contacting one of the Instructional Support Centers listed in Appendix E.

CHAPTER SIX

THE RIGHT TO POSITIVE BEHAVIOR PROGRAMS

DEVELOPING A BEHAVIOR PROGRAM

All students who have behavior issues that interfere with their ability to learn or the learning of others, must have a behavior program as part of their IEP. Behavior programs must be based on positive, not negative, approaches. Behavior programs include a variety of techniques to develop and maintain skills that will help the student learn to relate better to self, other students, staff, family and community, and to participate more fully in the regular education environment.

A student's behavior program should be based on a "functional assessment" of the student's behavior. This means looking at the student's behavior where it occurs and trying to answer some questions, such as:

- ◆ WHAT is the problem behavior?
- ◆ WHEN does it occur, and what seems to set it off?
- ◆ WHY does the student use that behavior? What does the child get or get to avoid by using the problem behavior?
- ◆ WHAT skills or other behaviors do we need to teach the student to use instead of the problem behavior and how will they be taught?

The child's IEP should then identify goals, objectives and specialized instruction in the behavior area. If needed, the student's IEP should contain a crisis intervention plan detailing ways of avoiding behavior problems, and the steps that should be followed if a behavioral problem occurs. Behavior programs, like other parts of the program, must be individualized and based on the student's needs.

The State Department of Education has published guidelines for the development of positive behavior programs for students. You can obtain a copy of the Guidelines for Effective Behavioral Support from one of the Instructional Support Centers listed in Appendix E. In addition, each Intermediate Unit employs a behavior specialist who is available to help you and your district develop appropriate assessments and programs. If your child's behavior program has not been working, you may want to ask your school district to request the assistance of the behavior specialist from your IU.

COORDINATED SERVICES

Some children may also be receiving behavior support services through another agency or program, such as the mental health system or the medical assistance program. It is important that all behavior services to a youngster be coordinated so that consistent approaches are used with the child. If your youngster is receiving "wrap-around" services, for example, you may want to invite the wrap-around staff to your child's IEP conference, especially if the child will be receiving wrap-around support while at school. In this way, the teacher and support staff can meet and can discuss the type of behavior program your child needs and how best to implement it in the school setting.

Each Intermediate Unit also has a "inter-agency coordinator" who is available to help work with the different agencies involved with your child. You should contact your Intermediate Unit for assistance if you feel more help is needed.

CHILDREN WITH COMPLEX NEEDS

Certain children have needs that are so complex that they require services from multiple agencies. Often, these children do not fit easily into an existing school program and are excluded from school or placed in far away residential facilities. In response to a lawsuit filed on behalf of these students, the State Department of Education has established an Interagency Support Project that will intercede whenever a student has been – or is expected to be – without an education program for more than 30 days. This includes all students who have been placed on "homebound instruction" for more than 30 days while school officials attempt to locate an appropriate placement.

If your child is in this situation, you can request assistance from the Project by calling them toll-free at 1-800-222-7372. Usually, an inter-agency team will be convened at the local level to do joint planning for the child. You will be a member of this team. The team will attempt to put together a package of supports, including both in- and out-of-school services to your child and family. All efforts will be made to keep the youngster in the home community. If the local team runs into difficulties, it can call on the resources of a regional, and, if necessary, state level team.

CHAPTER SEVEN

THE RIGHT TO EXTENDED SCHOOL YEAR PROGRAMS

Extended School Year (ESY) programs are services provided during times when the school is normally closed, such as the summer months or on weekends. An ESY program must be provided if needed to make a student's education program appropriate. ESY programs help the student attain or maintain skills and behaviors over program breaks. For example, if the student loses skills during a vacation period, and then has difficulty catching up again once the break is over, an ESY program should be provided. Other factors that can qualify a student for an ESY program include:

- ◆ Whether the student has mastered and consolidated an important skill or behavior at the point when the education program would be interrupted;
- ◆ Whether the skill or behavior being learned is particularly crucial to reaching the goals of self-sufficiency and independence from caretakers;
- ◆ Whether repeated interruptions in the education program will reduce a student's motivation and trust and may lead to an irreversible withdrawal from the learning process.

School districts must consider each eligible student's need for ESY services at the annual IEP conference. For youngsters with autism, severe mental retardation, multiple disabilities or severe emotional disturbances, a decision on the child's eligibility for ESY and the type and amount of services needed must be made by March 31st, so that if the parents disagree with the decision, they will have time before the summer months to challenge the decision at a hearing.

A variety of information must be considered in determining a student's eligibility for ESY services. School district may not limit information to be considered to "hard data." The opinions of parents, independent evaluators and others who know and work with the child are important. A student does not have to demonstrate failure first, in order to be considered eligible for ESY.

Under the law, a school district may not limit ESY services to children with particular categories of disability, and may not limit the type, amount or duration of ESY services. ESY programs are not limited to self-help and ba-

sis skills. Academic and vocational goals can also be part of an ESY program. ESY programs must be individualized to meet the needs of each student. School authorities may not offer only a "one size fits all" ESY program.

The details of the ESY program, including the number of days and weeks, must be listed on the student's IEP. Like other aspects of an appropriate program, ESY services must be free, including needed transportation. ESY services are subject to all due process protections.

CHAPTER EIGHT

THE RIGHT TO AN APPROPRIATE SCHOOL PLACEMENT

Once the IEP team has decided on the specific program and services the student will receive, the team must next decide where the child will receive them. The child's placement must be decided by the team at the IEP conference based on the student's needs and not by school officials on their own. The law specifically directs that a student's placement **cannot** be based on:

- ◆ The child's "label" or disability classification;
- ◆ The lack of available alternative placements;
- ◆ The lack of available programs and services;
- ◆ The lack of qualified staff;
- ◆ The lack of classroom space or of a facility; or
- ◆ The administrative convenience of school officials.

THE APPROPRIATE CLASSROOM

The law favors delivering special education programs and services within a regular education class whenever possible. A child whose IEP can be carried out successfully in a regular education class with supplemental aids and services should ordinarily attend a regular class in the neighborhood school. Supplemental aids and services can include special equipment, a modified curriculum or behavior plan, help from a special education teacher or aide, or use of a special education "resource room" for part of the day. In this way, the child is "included" within the general student population. If a regular education class is being recommended, you should look over the IEP and make sure that the supports needed for your child to succeed in the regular class will be in place. ***If the IEP does not contain the necessary supports, or if you are not sure, ask for an explanation.***

If your child would not make progress in a regular class, even with aids and services, the next placement choice would be a special education part-time or full-time class, with opportunities to be with regular education

students during the remainder of the day. Students must be grouped in special education classes according to their learning needs, and all students in a class must be able to benefit from the same level and manner of instruction. Categories of classes, such as learning support, emotional support, life skills support, etc. cannot be mixed except with the special approval of the PA Department of Education.

The law also requires that special education students be placed in classes with children in the same age range. At the elementary level (grades K-6), a class cannot have children who vary in age by more than three years. For example, it would not be appropriate to place children ages 6 through 11 in the same classroom.

At the secondary level (grades 7-12), an age range of no more than 4 years is allowed. It would therefore not be appropriate to have children ages 15 through 21 in the same class. An exception can be made to these age-grouping rules only by the IEP team. Any exception must be based on the child's needs and explained in the IEP.

State law sets the maximum class sizes for special education classes, depending on the type of program (learning support, life skills support, emotional support, etc.) and the amount of time your child spends in the class (itinerant, resource, part-time or full-time). A chart showing allowable class sizes is included in this Manual as Appendix F.

THE APPROPRIATE SCHOOL SETTING

The law requires that students with disabilities be placed in the school that will provide them the maximum opportunity - appropriate to the child's needs - to be with students who are not disabled. This is sometimes called placing the student in the "least restrictive environment." Like all other decisions, what is the "least restrictive environment" for your child will depend on your child's individual needs, not the convenience of school officials.

If your child will spend all or almost all of the school day in a regular classroom, the placement generally must be in the local school your child would normally attend. If your child will need a resource room or part-time class, the local school is still the preferred placement under the law. However, if this is not possible, the child must be placed in another regular education building within your school district that is as close to your home as possible.

If your child requires a full-time special education program, school officials must still try to place the child in a regular public school, unless the child's needs are so complex that this would not be appropriate. In cases where the IEP cannot be implemented in a special class within a regular

public school, the child must be placed in either a public or private special education school.

A private program can be recommended only if no public program exists or can be developed. Ordinarily, a student is assigned to a private school on a day basis only. A residential placement can be recommended by school officials only when the child needs a residential program to make meaningful educational progress, or if the only appropriate program is at a school so far away that daily transportation is not practical. However, your child can only be placed in a residential setting if you give your consent. Keep in mind that even if your child is placed in a day or residential school, the program and all necessary related services must be provided without charge. A residential placement may be available to certain children through other funding sources or public agencies, such as Medicaid, the Office of Mental Retardation, or the Office of Children, Youth & Families. In such cases, the school district will usually provide the daytime education program.

The least preferred education placement under the law is "homebound" instruction. Under this arrangement, a teacher must see the student for 5 or more hours a week, usually at the child's home. This type of placement can be offered only to children whose needs cannot be met in any kind of school setting, such as a child with complex medical needs who cannot leave home. Because this is the least preferred option, the placement of a child on homebound instruction must be reviewed every 3 months.

CHILDREN PLACED BY THEIR PARENTS IN PRIVATE SCHOOLS

Under state law, children with disabilities placed by their parents in private schools (including parochial schools) may still be entitled to receive some special services from the public school system. The services are usually provided by the intermediate unit in which the private school is located. Special services to private school students are sometimes called "auxiliary services." These types of services are usually provided at a nearby public school building before or after school hours, or can be provided in other ways, such as use of a mobile classroom unit.

In limited cases, parents of a child with disabilities may be entitled to get reimbursed for the tuition they paid to a private school. If the parents disapprove the program and placement offered by the school district and place the child in a private special education school while going through the hearing process - and they eventually win their case - they may be eligible to receive tuition reimbursement from the school district. Certain rules apply, however. For example, parents must generally give the school advance notice that they plan to enroll their child in private school and challenge the dis-

trict's offered program and placement. For more information on this topic, contact ELC offices.

CHAPTER NINE

THE NOTICE OF RECOMMENDED ASSIGNMENT (NORA)

Once the IEP team has worked out an IEP and placement, school officials must give or send you a written notice formally recommending the IEP and placement for your child. In Pennsylvania, this notice is called a Notice of Recommended Assignment (NORA). A Procedural Safeguards Notice should accompany the NORA. That Notice explains your rights to agree or disagree, your right to a hearing and other rights discussed in the next chapter. School officials must also give you a NORA at any time they want to change your child's program or placement.

You can and should disapprove the NORA and begin the due process procedures if you believe that the IEP and/or placement being offered are not appropriate for your child. You have 10 days to return the NORA if it is mailed to you and 5 days to return it if the form is given to you at a conference. If you are given the form and approve it within 5 days, you still have another 5 days to change your mind.

If you want the recommended program and placement to go into effect, you must approve the NORA- in writing - for your child's first special education placement. With later NORAs, if you do nothing, it will be assumed that you approve. If you do not approve, you must check the "I do not approve" line on the form, explain why and what solution you want to the situation, and return the form to school officials.

Even if you agree with the program outlined on the IEP, a recommended placement still may not be appropriate. For example, the placement may be at a school far from your home; the other youngsters in the proposed class may not be within your child's age range; or the placement may be in a special school and you believe your child should attend school in the same building as non-disabled students. Or, you may feel the IEP does not provide enough support for your child to succeed in regular education classes.

If you have these kinds of problems, you should disapprove the NORA and return it to school officials. When you check the "I do not approve" line on a NORA, you will automatically be starting the due process procedures discussed in the next Chapter. If, however, you would rather have your child in the placement being recommended than the one the child is currently in, you can approve the NORA - either initially or after meeting with school officials - and can still use the mediation or hearing process to try to resolve your concerns. In the meantime, your child will begin attending the new placement.

CHAPTER TEN

THE RIGHT TO DISAGREE WITH SCHOOL OFFICIALS

Even when you and school officials try your best to come up with the right program and placement for your child, there may still be disagreements. Disagreements can occur at any stage in the special education process - whether to do an evaluation or re-evaluation or what tests to use; whether the child has a disability and, if so, which disability; what program and related services are needed and in what amounts; whether the child's program is working well; or what class and school are needed to help your child learn. ***Under federal and state law, you not only have the right to disagree with school officials, you have the right to do something about it.*** These rights are sometimes called "due process" rights.

THE RIGHT TO NOTICE

The law requires that you be told about any proposals that school officials are considering for your child so that you can decide whether you agree or disagree with them. School officials must give you written notice whenever they want to evaluate or re-evaluate your child or whenever they want to make any significant changes in your child's IEP or placement. School officials must also give you written notice when they refuse to do something you have asked them to do.

All notices to you must be written in the language or form of communication you use (such as Braille). The contents of the notice must be in words that are easily understood and not overly technical. If you have trouble reading, school officials must help you understand the notice.

Each notice must tell you what school officials want to do, or what they refuse to do; the reasons why; and any tests, records, or evaluations they are using in making their decision. The notice must tell you the timelines used in the special education process. The notice must also tell you all of your rights, including your right to disagree and to use the pre-hearing conference and hearing process to resolve your concerns. The notice must explain your rights at a hearing and the agencies from which you may be able to get help or services for your child.

MEDIATION

Pennsylvania has a mediation system that can be used by parents and school officials to try to resolve their disputes. There is no cost to you for using the mediation system and you still have your rights to ask for a pre-hearing conference or a hearing if mediation is not successful.

If you request mediation, the State's Special Education Mediation Service will arrange for a neutral, specially trained person to be the mediator. The mediator will meet with you and school officials at a "joint session" where both sides get a chance to explain their points of view. The mediator can also meet with each side separately to find out more about each party's position. Neither school officials nor parents may use an attorney at a mediation session; this helps to keep the mediation process informal.

The mediator does not make a decision. Instead, it is the mediator's job to help parents and school officials reach their own agreement. If agreement is reached, it is put in writing and made part of the student's IEP. If no agreement is reached, mediation is called off. All discussions that take place as part of mediation, whether or not agreement is reached, are confidential.

HOW TO REQUEST MEDIATION:

If you and school officials have a disagreement about your child's evaluation, program or placement at any point in the process, you can request help from the Special Education Mediation System (SEMS). You can call them toll free at 1-800-992-4334. Someone from SEMS will then contact your school district and arrange for a mediation session to be scheduled within a few weeks.

THE PRE-HEARING CONFERENCE

In Pennsylvania, you may request a pre-hearing conference before you ask for a formal hearing. The pre-hearing conference is an optional first step in the due process procedures. It is a chance for you and district officials to try to work out your differences concerning your child's program and placement. It also gives each side a chance to understand the reasons for the other's position. Hopefully, a compromise can be worked out that will satisfy both sides.

If you have received a NORA from the school district and you check the "I do not approve" line, you automatically request a pre-hearing conference. If you have not received a NORA or other notice but want to discuss concerns about your child's program with school officials, you should request a pre-hearing conference in writing.

Since the pre-hearing conference is optional, either you or the school district may choose to skip this step and go directly to a hearing. However, districts will usually agree to have a pre-hearing conference if asked.

HOW TO REQUEST A PRE-HEARING CONFERENCE:

If you want to request a pre-hearing conference, write to your child's principal and ask for one. You can use the sample letter contained in this Manual at Appendix G, or you can write your own letter. Include your child's name, date of birth and current program. State that you want a pre-hearing conference and explain why you want one. Also, give dates and times within the next two weeks you'll be able to attend a conference. Be sure to keep a copy of your request for your records!

If you don't get a response within 2 weeks, call your child's principal to find out when the conference will be scheduled. If you do not get an answer, you can file a complaint with the State or request a hearing.

The conference must be held within 10 school days after school officials receive your written request, unless school officials notify you that they wish to skip the conference and go to a hearing. You have the right to bring a friend, neighbor, independent evaluator, advocate or attorney to the conference. If you and school officials cannot reach agreement at the conference, you may ask for a special education hearing.

You have the right to ask for as many conferences as you'd like, if you think that several meetings would be helpful. On the other hand, if you have already met with school officials and do not think more meetings will be helpful, you have the right to skip the pre-hearing conference and ask for an immediate special education hearing or for mediation.

THE SPECIAL EDUCATION HEARING

You have the right to request a special education "due process" hearing at any time concerning your child's evaluation, program or placement. Your request must state your reason for the hearing and your proposed solution to the problem. The school district may also request a hearing if you refuse to give your consent to an initial evaluation or re-evaluation or initial special education placement of your child. The school district must ask for a hearing if it turns down your request for an independent evaluation of your child at school district expense.

HOW TO REQUEST A SPECIAL EDUCATION HEARING:

To request a special education hearing, you must send a written request to your child's principal. You should send a copy of your request to your district's director of special education and/or district superintendent. You can use the sample letter found at Appendix H of this Manual, or you can write your own letter.

Your letter must state your child's name, date of birth, home address and the name of the school your child attends. You must also briefly explain the problem that will be the focus of the hearing and your proposed solution to the problem. Be sure to keep a copy of your hearing request for your records!

If you don't hear anything within a week or so, contact your child's principal. If you cannot get a satisfactory answer, you should contact the Right to Education Office (which supervises the hearing process) at 1-800-222-3353.

A hearing is held before an impartial hearing officer. The hearing officer cannot work for your school district or intermediate unit. Usually, hearing officers work at universities or private or public schools outside your area, or are professionals in private practice.

Although hearings are not as formal as court cases, they are more formal than conferences or meetings with school officials. Each side has a chance to have witnesses testify - school staff, evaluators, other professionals, neighbors, friends or family members who know the child - and each side may ask questions of the other side's witnesses. If you believe that someone

from the school district has information that is important to your case, you can ask the hearing officer before the hearing date to "subpoena" that witness to insure that he or she comes to the hearing. All witnesses give their testimony under oath.

Both sides may give the hearing officer written material, such as reports and evaluations, to consider. ***However, copies of any documents and a list of witnesses that are to be used at a hearing must be given to the other side at least 5 business days before the hearing date.*** The hearing is recorded and a transcript is made once the hearing is over. Usually, the school district is represented at the hearing by an attorney. Although parents do not have to have an attorney represent them, they should try to have an attorney or experienced advocate, if at all possible.

The hearing officer listens to both sides and then makes a written decision that is mailed to you and school officials. The hearing must be held within 30 calendar days of your request and a decision issued within 45 calendar of your request, unless the hearing officer grants an extension of time.

The hearing must be held at a place convenient for the parents and must be held in the evening if you request that. If you wish, the hearing can be "closed" to the public. If you choose to have the hearing "open," other people in addition to the witnesses can attend. Even if the hearing is open, only the decision can be made available to the public; if the hearing is closed, the decision is part of your child's records and cannot be released without your permission.

APPEALS FROM HEARING OFFICERS' DECISIONS

If you are not satisfied with all or part of the hearing officer's decision, you have the right to file an appeal to a 3-member Appeal Panel. The hearing officer is required to tell you at the hearing - and send you in writing with the decision - the procedures and timeline for filing the appeal.

TAKING YOUR CASE TO COURT

If you are unhappy with the decision on your appeal, you have the right to file a case in state or federal court. Cases in state court must be filed within 30 calendar days after the appeal decision. There is no clear timeline for filing cases in federal court; however, it is recommended that your case be filed as soon after the appeal decision as possible. You should use the services of an attorney if you are going to court.

HIRING AN ATTORNEY FOR YOUR HEARING OR COURT CASE

Under federal law, if you use the services of an attorney for a hearing or appeal, you generally have the right to be reimbursed by the school district for at least some of your attorney's fees and costs if you win all or most of your claim. You may also be eligible to be reimbursed for the costs of any independent evaluations used and the cost of having an independent evaluator testify at the hearing. Even if you settle your case before going to a hearing, or before the court case is decided, you may still have the right to collect attorney fees and costs. ELC has a publication, ***PAY UPI Obtaining Attorneys Fees and Costs***, that is available to attorneys with questions in this area.

If you want to hire an attorney, but don't know one, you can contact the Pennsylvania Bar Association toll-free at 1-800-932-0311. Tell them you need an attorney for a special education case. They will provide you a list of attorneys in your area who have participated in training workshops on special education law conducted by the Bar's Committee on the Rights of Exceptional Children. You can also contact your county Bar Association.

THE STUDENT'S PLACEMENT WHILE THE HEARING PROCESS IS TAKING PLACE

Once you have started the special education hearing procedures, there can be no change in the classification, evaluation, IEP, or placement of your child until all those procedures - from the pre-hearing conference, hearing, administrative appeal to court case - are completed, unless you and the district agree to a change. This is often called the "status quo" or "stay put" rule of the law. The only exceptions are certain disciplinary procedures discussed in Chapter Eleven.

FILING A COMPLAINT WITH THE STATE OR FEDERAL DEPARTMENT OF EDUCATION

The law also provides a way for you to file a complaint when you believe your child's rights are being violated. For example, you should use the complaint process if school officials are not giving your child the services listed on his or her IEP, or when school officials do not give you written notice before making significant changes to your child's program or placement.

In Pennsylvania, you can file your complaint with the Bureau of Special Education of the State Department of Education. The state must investigate the situation and issue a written decision to you and school officials within 60 days of receiving your complaint. If the state agrees that your

child's rights have been violated, it should order the district to correct the situation and to make up any services your child has missed.

HOW TO FILE A COMPLAINT WITH THE STATE:

If you believe school officials have violated your child's rights, you should file a written complaint. The complaint can be in the form of a letter. Give your child's name, date of birth, school, and school district. You should then explain the problem you are having. You can send a copy of any papers you think would be helpful, such as your child's IEP. Send your complaint to the Bureau of Special Education, State Department of Education, 333 Market Street, Harrisburg, PA 17126-0333. Be sure to keep a copy of your complaint for your records! If you'd like, you can call the Special Education Consult-Line (800-879-2301) and ask that a complaint form be sent to you.

Under a federal law known as Section 504 of the Rehabilitation Act of 1973, school districts and others that receive federal funds may not discriminate against children or adults on the basis of handicap. If your child has a disability and you believe that school officials are violating your child's rights, you can also file a complaint with the U.S. Department of Education.

HOW TO FILE A COMPLAINT WITH THE FEDERAL GOVERNMENT:

You should send a letter explaining the details of your complaint along with your child's name, date of birth, school and school district. Explain why you feel the district has violated your child's rights. You should also include copies of any helpful material, such as your child's IEP. The letter should be sent to the Office for Civil Rights, U.S. Department of Education, Region III, Wanamaker Building, Suite 515, 100 Penn Square East, Philadelphia, PA 19107. Be sure to keep a copy of your complaint for your records!

CHAPTER ELEVEN

THE RIGHT TO SPECIAL PROTECTIONS IN SCHOOL DISCIPLINE

Children who receive special education services are entitled to special protections in the area of school discipline. The law recognizes that these children's behavior is sometimes a result of their special needs. Children with disabilities cannot be punished for behavior that results from their disability.

DISCIPLINE OF STUDENTS WHO HAVE MENTAL RETARDATION

Any proposed suspension or other exclusion from school of a student with mental retardation is considered a "change of placement for disciplinary reasons." Before such a change can be made, school officials must follow the procedures outlined below.

DISCIPLINE OF STUDENTS WHO HAVE OTHER DISABILITIES

Students with other disabilities may be suspended if they break school rules for up to ten (10) days at a time, but no more than fifteen (15) days in a school year, using the school's normal disciplinary procedures. Education services do not have to be provided to the student during these short-term exclusions. However, students must be allowed to make up work they missed while on suspension.

A proposed exclusion for more than 10 days at a time or 15 days in a school year is considered a "change of placement for disciplinary reasons." Before such a change can be made, school officials must follow the procedures outlined below.

CHANGE OF PLACEMENT FOR DISCIPLINARY REASONS

If school officials want to change a student's placement for disciplinary reasons, they must first notify the student's parents, in writing, of the proposal and of their rights. This includes any time officials want to suspend a student who has mental retardation, or suspend another student with disabilities for more than 10 days at a time or 15 total days in a school year.

Within 10 days, an IEP team conference must be held to review the child's program and placement and to determine if the behavior in question was a manifestation of the child's disability. Parents are, of course, members of the IEP team.

The team's first job is to review the behavior plan in the student's IEP to see if modifications are necessary in view of the behavioral incident in question. If there is no behavior plan in the IEP, the team must arrange for a functional behavioral assessment to be done and for a behavior plan to be developed promptly (See Chapter Six on Behavior Plans).

MANIFESTATION DETERMINATION

The IEP team must next determine if the child's behavior is caused by or related to the child's disability or to the lack of an appropriate program or placement. This is called a "manifestation determination." The law requires that the IEP team must consider all relevant information including evaluation and diagnostic results (including any results supplied by the parents); observations of the child; and the child's IEP and placement.

The team must answer the following four questions:

1. Were the child's IEP and placement appropriate?
2. Were all special education services, supplementary aids and services, and behavior intervention strategies provided as required by the IEP and placement?
3. Did the child's disability impair the ability of the student to understand the impact and consequences of the behavior?
4. Did the child's disability impair the ability of the child to control the behavior?

If the team decides that the student's actions were related to his or her disability, or if there was a lack of an appropriate program or placement, the student cannot be disciplined. School authorities must take immediate steps

to correct any problems identified in the student's IEP or placement or their implementation.

If the team decides that the behavior of the student was not a manifestation of the child's disability, the proposed disciplinary change in placement can be imposed. However, students are still entitled to receive an appropriate education, even if suspended or expelled. The IEP team must determine the services necessary for the student to continue to progress in the general curriculum and advance toward achieving program goals.

Parents who disagree with the manifestation determination have the right to request a due process hearing. If a hearing is requested, the disciplinary change in placement cannot be implemented and the student remains in his or her current placement until the hearing and appeal process is over.

EXCEPTIONS TO THESE RULES

If a special education student has a gun or other dangerous weapon, or uses or possesses illegal drugs while at school or a school function, the law generally allows school officials immediately to change the student's placement to an "interim alternative education setting" for up to 45 calendar days without the permission of the parents. An IEP meeting for purposes of reviewing the child's program and placement and making a manifestation determination must still be held within 10 days, but the student can be moved to the alternative setting before these procedures are begun. The student must be returned to his or her previous placement no later than 45 calendar days from the disciplinary change in placement.

Even if weapons or drugs are not involved, if school officials believe that there is a substantial likelihood that a student is a serious danger at school, they can request an emergency hearing and ask the hearing officer to place the child in an "interim alternative education setting" for up to 45 calendar days. School officials will have to show that they took steps to minimize the risk of harm in the child's current placement, including the use of supplemental aids and services.

The "interim alternative education setting" must be chosen by the IEP team. The setting must enable the student to continue to progress in the general curriculum and continue to receive the programs and services set out in the IEP. The setting must also provide services and modifications necessary to prevent the behavior from recurring.

Parents may request a due process hearing if they disagree with the alternative education setting that is chosen.

PROTECTIONS FOR CHILDREN NOT YET IDENTIFIED AS NEEDING SPECIAL EDUCATION

A student who has not yet been determined to be eligible for special education and who is subject to disciplinary procedures may assert the protections described in this chapter if the school district had knowledge before the behavior occurred that the student was eligible for special education.

In general, school officials will be considered to have knowledge that the student is an eligible student if one of the following conditions was met before the behavior occurred:

- ◆ The parent sent a letter to the school district indicating that the child requires special education and related services;
- ◆ The student's behavior or performance demonstrated the need for special education services;
- ◆ The parent requested that the child be evaluated for special education;
- ◆ School personnel referred the student for special education.

DISCIPLINARY ACTIONS THAT ARE PROHIBITED

The law states that certain disciplinary actions can never be used with students who have a disability. Schools are prohibited from using any of the following forms of disciplinary action:

- ◆ Corporal punishment;
- ◆ Punishing a student for behavior that is an outgrowth of the student's disability;
- ◆ Using "noxious" substances on the child, such as pepper sauce;
- ◆ Withholding food, fresh air (recess) or water from the student;
- ◆ Serial suspensions;
- ◆ Electric shock;
- ◆ Locking or keeping the student in a room, space or box from which he or she cannot easily leave;

- ◆ Any treatment that is demeaning;
- ◆ Any method not in the school's special education plan or used by an untrained individual;
- ◆ Mechanical or other restraints as punishment;
- ◆ Homebound instruction as a punishment.

IN-SCHOOL SUSPENSIONS AND SUSPENSIONS FROM THE BUS

In most cases, the same rules discussed above apply to in-school suspensions, if the suspension removes the student from his or her special education program or placement. If transportation is listed on the student's IEP, a proposed suspension from the school bus is treated the same way as a proposed out-of-school suspension.

CHAPTER TWELVE

THE RIGHT TO A HIGH SCHOOL DIPLOMA

All students with disabilities in Pennsylvania have the right to earn a regular High School Diploma. Students can earn a diploma by completing the same kind of courses and earning the same number of credits as regular education students. Or, a high school diploma will be awarded to a student with disabilities who completes the special education program developed by the IEP team.

Children with disabilities have the right to stay in school through the school year in which they turn 21 years old, or until they graduate. If the child accepts a high school diploma prior to age 21, the student cannot continue to receive free special education services. If a student is 18 or older and school officials believe the child has completed the programs in the IEP and is eligible to graduate, they must give parents written notice. If parents do not agree with this decision, they may begin the due process procedures and the student must be allowed to continue to attend school until the procedures are completed or the child is beyond school age.

CHAPTER THIRTEEN

THE RIGHT TO PRE-SCHOOL AND EARLY INTERVENTION SERVICES

PRE-SCHOOL PROGRAMS

Federal and state law require that free and appropriate pre-school programs be provided to all children with disabilities or developmental delays ages 3 to 5 years old. In most areas of the state, pre-school programs are provided through local intermediate units, either directly or through contracts with private providers.

Most of the rules that apply to school age students with disabilities also apply to pre-schoolers ages 3 to 5. For example, parents of pre-schoolers who need or are thought to need special education services have the same rights to receive written notices and to use mediation and the pre-hearing conference, hearing and appeal process discussed in Chapter Ten.

The evaluation process for pre-schoolers is very similar to the one discussed in Chapter Two for school age students. A Multi-Disciplinary Team (MDT) that includes the parents must do an evaluation. A report must be written and given to the parent recommending whether the child is eligible for services and, if so, what services are needed. For pre-schoolers, the evaluation must be completed within 45 calendar days after parental consent for the evaluation is given.

Since these children are very young, they need a different type of evaluation than that given to school age children. The evaluation must look at the child's developmental levels and physical development to determine if the child has a disability or is developmentally delayed. Re-evaluations must be done each year for eligible pre-schoolers - rather than every two years.

The Individualized Education Program (IEP) is also similar to the one discussed in Chapter Three. The IEP must be based on the child's needs and must provide the programs and special services that meet those needs. The IEP is developed at a conference by an IEP team, which must include the child's parents. In the case of children receiving pre-school services, the IEP must be reviewed, and if necessary revised, every 6 months.

With the agreement of the parents, the IEP of an eligible young child must contain a section on services to the family necessary to assist the child's development. Also, the IEP must contain a section addressing the child's move to public school beginning at least 1 year before the child becomes school age.

The biggest areas of difference between special education services to children of school age and special education services to pre-school children are in the types of services that can be provided and where those services can be provided.

TYPES OF PRE-SCHOOL SERVICES AND PLACEMENTS

Because not all young children are ready to attend a "school" program for a full day, it is sometimes appropriate to provide special services to the family and child in the home. If a youngster is enrolled in a public or private pre-school program, support to the regular teacher may be all that is needed. Students can also receive programs that combine in-home and in-school programs. Finally, pre-schoolers can attend special classroom-based programs. The law requires that pre-schoolers receive their programs together with children without disabilities, to the maximum extent appropriate to the needs of the child. ***The type, amount and location of special services provided must be based on the child's needs.***

CHILDREN FROM BIRTH TO 3 YEARS OLD

Children below age 3 are eligible for early intervention services if they have a developmental delay or have a physical or mental disability (such as Down Syndrome) that is likely to result in a developmental delay. The term "developmental delay" includes delays in physical development, language and speech, cognitive, emotional or social development, or in self-help skills. Services to these children are provided through the Mental Health/Mental Retardation System (MH/MR) of the Department of Public Welfare, rather than through the school system.

"Early Intervention" services are services necessary to meet the child's developmental needs. These can include - but are not limited to - occupational, physical and speech and language therapies, psychological services and specialized learning instruction. Services can be provided in the child's home, at the child's day care center, or in a separate, specialized facility, depending on the child's needs. Early Intervention services also include family training and counseling and other services needed by the family to support the child's development.

If you think your child is eligible for services, you should contact your county Mental Health/Mental Retardation office. It is usually listed in the blue pages of your local phone book. MH/MR is the contact for all children needing Early Intervention services, including children who do not have mental health problems or mental retardation.

Under federal law, these youngsters have the right to multidisciplinary evaluations and individualized programs and services. Parents also have the right to written notices of any proposed action concerning their child and the right to disagree with the proposal and request a hearing to resolve their concerns. For more information about the Early Intervention system and your rights, you may contact ELC or a local parent support group listed in Appendix I.

CHAPTER FOURTEEN

OTHER IMPORTANT SPECIAL EDUCATION RIGHTS

YOUR RIGHT TO SEE AND GET COPIES OF YOUR CHILD'S SCHOOL RECORDS

Federal and state law give all parents the right to see and get copies of their child's public school records. If your child now receives - or has ever received - special education services, you have the right to see and get copies of the records within 30 days of your request.

If your child is going to be evaluated by the school district, or if an IEP conference or hearing has been scheduled, you have the right to see and get copies of your child's records before the evaluation, conference or hearing, even if that is less than 30 days. If you cannot go to the school to see or copy the records, you can send someone in your place.

HOW TO REQUEST COPIES OF YOUR CHILD'S RECORDS:

If you want to see or get copies of your child's school records, you should write to your child's principal. If you will be unable to go to the school yourself, tell the principal in your letter the name of the person who will be going for you. If your child is over 18 years old, he or she must also sign the letter. Be sure to keep a copy of your request for your own records! If you do not hear from school officials soon, call the principal for an explanation. If you are not given a chance to see and copy the records within the timelines, you can file a complaint with the state. (See Chapter Ten).

You may not be charged for the cost of seeing the records. You can, however, be charged the actual cost of copying them, so long as the charge is not so high that you would be unable to pay it. The law also gives you the right to ask for and receive from school officials an explanation of any information contained in the records.

Your child's "records" include all the information kept or used by the school officials that relate directly to your youngster. This includes evaluation and test results and any other material used in deciding if your child has a disability, or the appropriate program and placement for your child. You do not have the right, however, to see the private notes of school officials, therapists or teachers that are not shared with anyone else and are not kept in your child's file.

The law also mandates that school officials keep your child's school records confidential. Records generally cannot be released to anyone outside the school system without your consent, or the consent of your youngster if over 18 years old. Your school district must have a procedure you can use to have the records corrected if, after seeing them, you feel that they are inaccurate or misleading.

THE RIGHT TO PROPER MATERIALS, CLASSROOMS AND SCHOOL BUILDINGS

Children in special education programs have the right to receive the same quality materials (such as books), classrooms, furniture and school buildings as are provided to children in regular education. School officials must not assign exceptional students to isolated areas of a school or to rooms or areas that are not designed for instructional purposes or that are not easily accessible. Classrooms and furniture must be appropriate for the students in the room. For example, if there are children in the room who use wheelchairs, the room must be big enough so that the students can move around without difficulty.

In addition, school officials must not move special education classes - or transfer special education students - unless there is a valid reason for doing so. State law requires that, in general, the location of special education classes must stay the same for at least 3 school years so that students will not have to get used to a new school each year.

SPECIAL RIGHTS OF CHILDREN LIVING IN CARE

Many rights provided under the special education law belong to the child's "parents," such as the right to request an evaluation or approve or reject an IEP or placement. The law gives the term "parent" a broad meaning. "Parent" means the child's natural or adoptive parents, the child's legal guardian, or a grandmother or other adult with whom the child lives who is raising the child on a long term basis.

If the parents of a child are no longer living, the parents' rights have been legally terminated by a court, or no parent can be located, the law requires school officials to appoint an adult to serve as the child's "parent" throughout the special education process. This adult - called a "surrogate parent" under special education laws - has the same rights as the birth parents to request evaluations, approve or not approve programs, or to use the mediation or hearing process.

A person appointed as a surrogate parent must not work for the school district or intermediate unit and must not have any conflicts of interest that would prevent the adult from being a strong advocate for the child. If a child is in foster care, the foster parent may be appointed as the child's surrogate parent; however, the child's caseworker should not fill this role. School officials must provide training to anyone appointed as a surrogate parent.

CHAPTER FIFTEEN

CONCLUSION

The rights described in this Manual exist because parents, professionals and others concerned about the needs of children with disabilities banded together and worked for the passage of state and federal laws. It will take the continued hard work of parents and other child advocates to make sure these rights are not hollow promises, but instead result in quality programs for eligible children.

We hope this Manual has helped you better understand the special education system and has given you some tips on how to get an appropriate program for your child. ELC also has available a series of brochures on a number of special education topics. Each brochure focuses on a specific step or right in the special education system. For a listing of brochures and other publications available from ELC-PA, see Appendix L. In addition, Appendix I contains a listing of state-wide parent advocacy and support groups that may also be able to assist you.

While the special education system may seem complicated, its basic design is really quite simple: to look at each child, determine what learning needs the child has, and provide the program and services necessary to meet those needs. If you and school officials stay focused on your child and your child's needs, an appropriate program should not be hard to obtain.

Good luck!

APPENDIX A

DEFINITIONS OF RECOGNIZED DISABILITIES

22 PA CODE 342.1 Definitions.

(b) Additional definitions. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Autism/pervasive developmental disorder—A developmental disability characterized by qualitative distortions in the development of cognitive, language, social or motor skills. Determination of autism/pervasive developmental disorder shall include a full assessment and comprehensive report of diagnosis by a physician qualified to render a diagnosis and by a public school psychologist specifying the nature and degree of the disorder. Eligibility for special education services and programs for a student may not be limited solely because of the failure of a neurological examination by a physician to identify the child as having autism. Symptoms are typically manifested before 3 years of age, are not usual for any stage of child development and shall include two or more of the following:

- (i) Impairment in reciprocal social interaction.
- (ii) Impairment in communication and imaginative activity including verbal and nonverbal skills.
- (iii) Markedly restricted repertoire of activities and interests, often involving resistance to change and motor or verbal stereotypes.
- (iv) Abnormal or inconsistent responses to sensory stimuli in one or more of the following areas: sight, hearing, touch, pain, balance, smell, taste, posture and motor behavior.

Blindness or visual impairment—A visual impairment which adversely affects the educational performance of the person. Determination of visual impairment shall include a full assessment and comprehensive report by an eye specialist specifying the nature and degree of the impairment.

Deafness or hearing impairment—A hearing loss which interferes with the development of the communication process and results in failure to achieve educational potential. Determination of the hearing impairment shall include a report by an audiologist or otologist, or both, specifying the nature and degree of the impairment.

Developmental delay—

- (i) This term is limited to early intervention

services and programs under 342.51–342.56 (relating to early intervention).

(ii) A child is considered to have a developmental delay when one of the following exists:

(A) The child's score, on a developmental assessment device, on an assessment instrument which yields a score in months, indicates that the child is delayed by 25% of the child's chronological age in one or more developmental areas: cognitive, language/speech, physical, social/emotional, and self-help, and by reason thereof needs early intervention services as defined in this chapter, Chapter 14 (relating to special education) and the Early Intervention Services System Act (11 P.S. 875–101–875-503).

(B) The child is delayed in one or more of the following developmental areas: cognitive, language/speech, physical, social/emotional, and self-help, as documented by test performance of 1.5 standard deviations below the mean on standardized tests, and by reason thereof needs early intervention services as defined in this chapter, Chapter 14 and the Early Intervention Services System Act.

(iii) Determination of developmental shall specify the nature and degree of the delay and shall include a full assessment and comprehensive report by one or more of the following: a certified public school psychologist, speech correctionist, a pediatrician or a psychiatrist, and shall specify the nature and degree of the delay.

Mental retardation—Impaired mental development which adversely affects the educational performance of a person. The term includes a person who exhibits significantly impaired adaptive behavior in learning, maturation or social adjustment as a result of subaverage intellectual functioning. The term does not include persons with IQ scores of 80 or higher. Determination of mental retardation shall include a full assessment and comprehensive report by a public school psychologist certified by the Department specifying the nature of the impairment and the level of functioning.

Multiple disabilities—Concomitant impairments, such as mental retardation and a physical disability, the combination of which results in needs which require extraordinary service delivery. The term does not include students who are "deaf-blind".

Neurological impairment (traumatic brain injury)—An injury to the brain, as identified by a neurological examination, resulting in behavior or learning disorders, or both. Persons whose behavior and learning disorders are primarily the result of visual, hearing or motor handicaps, mental retardation, emotional factors or environmental disadvantage are not neurologically impaired. The term does not include minimal brain dysfunction (see the definition of specific learning disability in this section). Determination of neurological impairment

shall include a neurological report from a physician and a psychological report from a certified public school psychologist and shall specify the nature and degree of the impairment. The evaluation process shall adhere to 14.25 (relating to evaluations).

Other health impairments—Conditions in which a person exhibits limited strength, vitality or alertness, due to chronic or acute health problems, including a heart condition, spina bifida, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, environmental illness, such as lead poisoning, leukemia or diabetes, which conditions adversely affect a child's educational performance. Determination of other health impairments shall include reports from a physician and a certified public school psychologist and shall specify the nature and degree of the impairment.

Physical disability—A functional limitation which affects one or more of the following: physical mobility, speech or other forms of nonvocal communication, writing, arm and hand movement, eye and head movement or one or more of the precursor developmental steps which lead up to full attainment of these skills necessary for success in education. Determination of physical disability shall include reports from a physician and a public school psychologist, shall specify the nature and degree of the impairment and, when appropriate, the student's ability to profit from assistive technology.

Serious emotional disturbance—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree which condition adversely affects educational performance: an inability to learn which cannot be explained by intellectual, sensory or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; a tendency to develop physical symptoms or fears associated with personal or school problems. The term does not include students who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed. A student may not be determined to have a serious emotional disturbance for disciplinary reasons alone. Determination of serious emotional disturbance shall include a full assessment and comprehensive report by a certified public school psychologist and may include the diagnosis of a licensed psychiatrist.

Specific learning disability—

(i) A chronic condition of presumed neurological origin which selectively interferes with the development, integration or demonstration of language, spoken or written, or of nonverbal abilities.

(ii) The condition manifests itself, when the child is provided with learning experiences appropriate for the child's age and ability level, as a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

- (A) Oral expression.
- (B) Listening comprehension.
- (C) Written expression.
- (D) Basic reading skill.
- (E) Reading comprehension.
- (F) Mathematics calculation.
- (G) Mathematics reasoning.

(iii) The term is not synonymous with underachievement. The term includes specific deficits in receptive and expressive language and deficiencies in initiating or sustaining attention, impulsivity, and other specific conceptual and thinking difficulties, such as nonverbal reasoning, integrating problems, motor coordination and social perception. Examples of the condition include minimal brain dysfunction, dyslexia and developmental aphasia, if the evaluation clearly indicates that the person can demonstrate normal or above normal intellectual functioning on an appropriate measure of intelligence. The term does not include learning conditions which are primarily the result of sensory impairment, physical disability, mental retardation, emotional factors or environmental, cultural or economic disadvantage. Determination of the learning disability shall include a full assessment and comprehensive report by a certified public school psychologist specifying the nature and degree of the disability. The multidisciplinary evaluation report shall include a statement of the relationship of the relevant behavior observed to the child's academic functioning, the educationally relevant medical findings, if any, and a statement of whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services.

Speech and language impairment—

Impairments of language, voice, fluency or articulation that are not due to sensory impairment or developmental delay, but which are present to such a degree that academic achievement is affected and the condition is significantly disabling to the affected person. Determination of speech and language impairment shall include the report of a certified speech clinician specifying the nature and degree of the impairment.

APPENDIX B

SAMPLE LETTER REQUESTING AN EVALUATION

Your Address
Your Phone Number
Date

Principal
Your Child's School
Address

Dear :

I am the parent of _____, whose date of birth
is _____.

My child has not been doing well in school and I am therefore requesting
that a complete Multi-disciplinary Evaluation be done to determine what the
problems are, how they can be addressed, and whether my child requires special
education services.

Please let me know when the MDT will meet so that I may attend. I
hereby give my consent for the evaluation to take place. I understand that under
the law, the MDE must be completed within 45 school days of this request.

Should you have any questions or problems with this request, please
contact me.

Thank you.

Sincerely,

Your Name

APPENDIX C

SAMPLE LETTER REQUESTING A RE-EVALUATION

Your Address
Your Phone Number
Date

Principal
Your Child's School
Address

Dear :

I am the parent of _____, whose date of birth is _____.

I feel that my child is not making progress in his/her special education program. I am particularly concerned about the area of _____.

In order to better understand the problem and the type and amount of services that may be needed, I am requesting a re-evaluation of _____.

Please contact me at your earliest convenience to let me know when the re-evaluation will take place. I hereby give my consent for the re-evaluation.

Thank you.

Sincerely,

Your Name

APPENDIX D

SAMPLE LETTER REQUESTING AN INDEPENDENT EVALUATION

Your Address
Your Phone Number
Date

Principal
Your Child's School
Address

Dear :

I am the parent of _____, whose date of birth
is _____.

I am requesting that the school district agree to pay for an independent
evaluation of my child. I believe that the district's evaluation was not appropriate
because.....

I understand that if the school district turns down my request, it must ar-
range for a special education hearing. I would appreciate it if you would contact
me at your earliest convenience to let me know whether the independent evalua-
tion will be paid for, or whether a hearing will be scheduled.

Thank you.

Sincerely,

Your Name

APPENDIX E

INSTRUCTIONAL SUPPORT SYSTEM OF PENNSYLVANIA

PA DEPARTMENT OF EDUCATION

Bureau of Special Education
333 Market Street
Harrisburg, PA 17123-0333
website: www.pde.psu.edu/semain.html

The Instructional Support System of Pennsylvania (ISSP) provides technical assistance to school districts and parents. Contact your Instructional Support Center for copies of guidelines and other information on the development and implementation of programs for students with disabilities.

EASTERN INSTRUCTIONAL SUPPORT CENTER

200 Anderson Road
King of Prussia, PA 19406
610-265-7321
website: www.eisc-prise.mciu.k12.pa.us

CENTRAL INSTRUCTIONAL SUPPORT CENTER

6340 Flank Drive, Suite 600
Harrisburg, PA 17112
717-541-4960
website: www.cisc.k12.pa.us

WESTERN INSTRUCTIONAL SUPPORT CENTER

5347 William Flynn Highway Rt. 8
Gibsonia, PA 15044
412-443-7821
website: www.wisc.org

APPENDIX F

CLASS SIZE CHART

22 PA CODE SECTION 342.42(j):

TYPE OF CLASS ↓	ITINERANT	RESOURCE	PART-TIME	FULL-TIME
Learning Support	6	8	8 (Elem) 9 (Sec)	12 (Elem) 15 (Sec)
Life Skills Support	4	6	8 (Elem) 9 (Sec)	12 (Elem) 15 (Sec)
Emotional Support	4	6	10	12
Deaf/Hearing Support	4	6	6	8
Blind/Visual Support	4	6	8	12
Speech/Lang. Support	4			8
Physical Support	4	6	6	12
Autistic Support	4	6	6	8
Multi-Dis. Support	4	6	6	8

APPENDIX G

SAMPLE LETTER REQUESTING A PRE-HEARING CONFERENCE

Your Address
Your Phone Number
Date

Principal
Your Child's School
Address

Dear :

I am the parent of _____, whose date of birth
is _____.

I hereby request that a Pre-Hearing Conference be set up so that we may
discuss concerns I am having with my child's IEP and program. In particular, I
am concerned about _____

I understand that the under state law, the PHC must be held within 10
days of my request. Within the next 2 weeks, I will be available for a conference
_____.

[I would like to see and get copies of my child's school records prior to the
conference date. Please let me know a convenient date and time.]

Please contact me at your earliest convenience to let me know the date
and time for the PHC.

Thank you.

Sincerely,

Your Name

cc: Special Education Director

APPENDIX H

SAMPLE LETTER REQUESTING A DUE PROCESS HEARING

Your Address
Your Phone Number
Date

Principal
Your Child's School
Address

Dear :

I am the parent of _____, whose date of birth is _____. My child is a student in the _____ grade.

I hereby request a formal Due Process Hearing concerning my child's special education program and placement. In particular, my area(s) of concern are _____.

I believe that for my child to receive an appropriate program and placement, the following changes are needed:

I am requesting that the Hearing be Open/Closed and held during the Day/Evening.

[I would appreciate receiving copies of all my child's records prior to the hearing and as soon as possible.]

Thank you.

Sincerely

Your Name

cc: District Superintendent

APPENDIX I

STATE-WIDE AND REGIONAL PARENT SUPPORT GROUPS

THE ARC OF PA

Building #2, Suite 221
2001 North Front Street
Harrisburg, PA 17102
1-800-692-7258

AUTISM SOCIETY OF AMERICA - PA CHAPTER

500 G. Garden City Drive
Garden City Plaza
Monroeville, PA 15146
412-856-7223

AUTISM SUPPORT & ADVOCACY IN PA (ASAP)

243 Lenoir Avenue
Wayne, PA 19087
610-688-8894

CHILDREN WITH ATTENTION DEFICIT DISORDERS (CHADD)

800-233-4050
301-306-7070 (National Office)

LEARNING DISABILITIES ASSOC. OF PA

610-458-8193

YOUR LOCAL TASK FORCE

There is a Task Force in each IU in the State. For information on the Task Force in your area, call the State Force Office at 1-800-360-7282.

MENTOR PARENT PROGRAM

P.O. Box 47
Pittsfield, PA 16340
1-888-447-1431 fax (814) 563-3445
(Northwest Rural PA)

PARENT EDUCATION NETWORK

333 East 7th Avenue
York, PA 17404
1-800-522-5827

PARENT INFORMATION PROJECT

Indiana Univ. of PA, 227 Davis Hall
Indiana, PA 15705-1087
724-357-7841

PARENT INVOLVED NETWORK (PIN)

1211 Chestnut Street, 11th Floor
Philadelphia, PA 19107
1-800-688-4226
(helps families whose children have emotional problems)

PARENTS UNION FOR PUBLIC SCHOOLS

1315 Walnut Street, Suite 1124
Philadelphia, PA 19107
215-456-1166
(Philadelphia and Southeast PA)

PA PARENTS' RESOURCE NETWORK

P.O. BOX 4915
Harrisburg, PA 17111-0915
1-888-5-PARENT (572-7368)

TOURETTE SYNDROME SOCIETY

132 West Middle Street
Gettysburg, PA 17325
1-800-446-6356

UNITED CEREBRAL PALSY

102 Mermaid Lane
Philadelphia, PA 19118
215-242-4200

UNITED MENTAL HEALTH OF ALLEGHENY COUNTY

1945 5th Avenue, 3rd Fl.
Pittsburgh, PA 15219
412-391-3820

APPENDIX J

WEB SITES OF INTEREST

Educational Rights – EDLAW
<http://www.edlaw.net>

U.S. Department of Education
Office of Special Education Programs
(OSEP)
<http://www.ed.gov/offices/OSERS/OSEP/>

IDEA Practices
<http://www.ideapractices.com>

Education Law Center – PA
<http://www.elc-pa.org>

Pennsylvania School Reform Network
<http://www.psrn.org>

Parents Involved Network (PIN)
<http://www.pinofpa.org>

ARC of the United States
<http://www.thearc.org>

Special Education Resources on the
Internet
<http://www.hood.edu/seri/serihome.htm>

PACER Center on Parent Training and
Information
<http://www.pacer.org>

Kids Together
<http://www.kidstogether.org>

National Information Center on Children &
Youth with Disabilities
<http://www.nichcy.org>

Bazelon Center on Mental Health Law
<http://www.bazelon.org>

Reed Martin, JD - Special Education Law
<http://www.reedmartin.com>

Wright's Special Education Law
<http://wrightslaw.com>

APPENDIX K

LEGAL BIBLIOGRAPHY

Laws and policies that give children the right to a free appropriate education exist at the federal, state and local levels. It is important to remember that while state laws or local policies may expand the rights provided under federal law, they may not reduce federal rights. When a state law or local policy conflict with federal law, federal law controls.

FEDERAL LAWS AND REGULATIONS:

The Individuals with Disabilities Education Act (IDEA) is the main federal law in the special education area for students who have disabilities.

The law is published at 20 U.S.C. Sections 1400, et. seq., and the implementing regulations are published at 34 C.F.R. Part 300.

Section 504 of the Rehabilitation Act of 1973 is a "civil rights" law that prohibits discrimination against otherwise qualified people on the basis of disability. Section 504 also requires public schools to provide children with handicaps a free appropriate education. The law applies to all recipients of federal funds.

Section 504 is published at 29 U.S.C. Section 794 and the implementing regulations are published at 34 C.F.R. Part 104.

STATE LAW AND REGULATIONS:

The Pennsylvania School Code requires that school districts identify and appropriately educate all exceptional children, including children with disabilities and children who are mentally gifted.

Relevant sections of the School Code are found at 24 P.S. Sections 13-1371 through 13-1377.

State Regulations: Several chapters of the state education regulations apply to special education programs and services:

22 PA Code Chapter 14. Chapter 14 is the main chapter of state regulations on special education, including IEPs, placement options and due process procedures.

22 PA Code Chapter 171. This chapter applies to the operation of, and placement of children at, approved private schools for children with disabilities.

22 PA Code Chapter 342. Chapter 342 contains the state standards that apply to special education programs and services, including definitions of the various disabilities, evaluation procedures and class size maximums.

LOCAL POLICIES:

Each school district and intermediate unit must prepare a "special education plan" that describes what services will be provided and other aspects of its special education program. These plans must be approved by the local school or IU board and by the state Department of Education. You may usually obtain copies of your district's plan through the Superintendent's office.

APPENDIX L

OTHER PUBLICATION AVAILABLE FROM ELC-PA

To obtain copies of these publications, contact ELC-PA at 215-238-6970 or 412-391-5225, or by e-mail at elc@elc-pa.org.

Manuals

- ◆ Special Education in a Nutshell
- ◆ El Derecho a la Educación Especial en Pennsylvania: Una Guía para Padres
- ◆ Children in Placement: Their Rights to Education and Health Care Services:
A Handbook for Caseworkers, Probation Officers and Advocates
- ◆ Fairness in Discipline: The Rights of Public School Students
- ◆ Getting Involved in Public Education: A Primer for Parents and the
Community
- ◆ Let the Sun Shine In: The Sunshine Act, the Right to Know Law and the
Public Education System: A Citizen's Guide
- ◆ Pay Up! Obtaining Attorneys' Fees and Costs in Special Education Cases: A
Handbook for Attorneys

Brochures

In addition to our manuals, we also have several single issue brochures available, many of which you can download from our website: www.elc-pa.org.

- | | |
|---|---|
| ◆ Assistive Technology for Special
Needs Students | ◆ Disciplining Children with Dis-
abilities |
| ◆ Chapter 15 (Children with dis-
abilities who need accommoda-
tions in school) | ◆ Due Process Procedures |
| ◆ Compensatory Education | ◆ Early Intervention: How and
When to File a Complaint |
| | ◆ Early Intervention Services for
Infants and Toddlers |

- ◆ Early Intervention Services for 3- to 5-Year-Olds
- ◆ Education Services for Children with Attention Deficit Disorder
- ◆ Eight Common Myths About Special Education Laws
- ◆ Evaluating Children with Disabilities
- ◆ Extended School Year (ESY) Program
- ◆ Independent Evaluations: What to Consider
- ◆ Long Bus Rides
- ◆ Related Services
- ◆ Special Education Placements
- ◆ The Special Education Process in Pennsylvania
- ◆ Special Education Services to Children in Private Schools
- ◆ Surrogate Parents
- ◆ Timelines Within the Pennsylvania Special Education System
- ◆ Tips for Effective Advocacy
- ◆ Transition Planning
- ◆ Transportation for Students with Disabilities
- ◆ Using Medical Assistance in the School
- ◆ Vocational Education
- ◆ What is an Individualized Education Plan (IEP)?
- ◆ What Not to Accept When Developing Your Child's IFSP or IEP
- ◆ What to Do When a Special Education Program Is Just Not Working

Tenemos los siguientes folletos en español:

- ◆ La Educación Especial y Sus Derechos Legales
- ◆ Servicios para Niños Menos de Tres Años con Inhabilidades

NOTES

DATE	ACTIVITY

NOTES

DATE	ACTIVITY

NOTES

DATE	ACTIVITY

STEPS TO TAKE WHEN A SPECIAL EDUCATION PROGRAM IS JUST NOT WORKING

1 Talk with your child's teacher, either by phone or, if possible, in person. Find out if the teacher sees the same problems you do, and if the teacher can think of any changes in the classroom that might help. Are all services on your child's IEP being provided? Are there certain subjects or times of day that seem particularly hard for your youngster in class? Are the teaching strategies working for your child? Is more help needed? Are there ways you can help by working with your child at home?

2 If the situation does not improve, write to the school principal to request a **PRE-HEARING CONFERENCE**. Keep a copy of the letter for yourself. School officials must contact you and schedule the Conference within 10 days of receiving your letter.

Take a friend, neighbor or advocate with you to the PHC, if possible. At the Conference, you should:

- Discuss your concerns for your child and your view of the situation.
- Review your child's current IEP and ask about his or her progress in reaching IEP goals and objectives.
- Find out if others agree with your concerns and if they know how to correct the problems.
- If no one seems to have the answers, perhaps your child needs to be re-evaluated. For example, an instructional evaluation may help find out how your child learns, or a behavior evaluation might show what changes are needed to the behavior program. *Remember, all needed evaluations must be done without cost to you.*

If evaluations will be needed, work out a prompt schedule with school officials, and a date to meet again to review the evaluation results and make necessary changes to the program.

3 If you cannot reach agreement with school officials, or have already had several meetings, you can request **MEDIATION**. Mediation is voluntary on the part of parents, but can often be quite helpful. A trained, impartial person is assigned by the state to meet with both sides to help find a resolution. For information, contact the Special Education Mediation Service at 800-992-4334.

4 If Mediation has not worked, or if you do not want to use it, request a **DUE PROCESS HEARING** by writing to the principal with a copy to the superintendent. Your request must include your reasons for asking for the hearing, and your proposed solution to the problem. At the Hearing, you will have a chance to explain your child's situation to an impartial Hearing Officer. The Hearing Officer then makes a written decision. The hearing decision can be appealed.

5 If your child is not getting the services listed on the IEP, or if the school district does not comply with timelines or procedures, you should **FILE A COMPLAINT** with the State's Bureau of Special Education. Send them a letter explaining your concerns. The state has 60 days to investigate and resolve the complaint. Send your complaint to:

Bureau of Special Education
333 Market Street
Harrisburg, PA 17126-0333